

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

RICO LATRELL BURNETT,

Petitioner,

v.

ACTION NO. 2:16cv177

HAROLD W. CLARKE, Director,
Virginia Dept. of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, through counsel, submitted a petition, pursuant to 28 U.S.C. § 2254. ECF No. 1. The Petition alleges violations of federal rights pertaining to Petitioner's convictions in the Circuit Court for the City of Hampton for attempted capital murder of a police officer, use of a firearm in an attempted capital murder, hit and run, possession of marijuana, reckless driving, and felony eluding. As a result of the convictions, Petitioner was sentenced to and is serving seventy-five years for attempted capital murder of a police officer and a \$100,000 fine, three years for use of a firearm in the attempted capital murder, seven years for hit and run, thirty days for possession of marijuana

and a \$200 fine, twelve months for reckless driving and a \$2,500 fine, and five years for felony eluding.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation filed December 5, 2016, recommends dismissal of the Petition. ECF No. 9. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 19, 2016, the Court received Petitioner's objections to the Report and Recommendation, which objections repeat the claims made in the original Petition. ECF No. 10. The Respondent has not responded to the Petitioner's objections and the time to do so has expired.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed December 5, 2016. It is, therefore, ORDERED that the Respondent's Motion to Dismiss, ECF No. 5, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further ORDERED that judgment be entered in favor of Respondent.

The Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner's counsel and counsel of record for Respondent.


Mark S. Davis
United States District Judge

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January **20**, 2017